

U.S. Magnesium Claims It Can Discredit EPA Suit

BY JUDY FAHYS

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U.S. Magnesium says its lawyers may have discovered a smoking gun that will show a federal judge that he should throw out a \$1 billion lawsuit federal regulators brought against the company last year.

Owners of the magnesium-processing mill on the Great Salt Lake's southwestern shore, formerly known as MagCorp, contend that even employees of the U.S. Environmental Protection Agency (EPA) disagree about how to interpret the law regulators say U.S. Magnesium is violating.

Presented with these arguments, U.S. District Judge Dee Benson last week postponed a hearing to give company lawyers two more months to gather witness statements.

Neither side had much to say about the latest development.

"We are confident that our people understand the law and its application to MagCorp and U.S. Magnesium," said EPA attorney Andy Lensink. "We are hopeful and confident that the court will ultimately agree with us."

Said the company's Tom Tripp: "Our position really hasn't changed; we think we have a strong position."

The hearing originally set for Wednesday would have been the first since owners of the bankrupt MagCorp reorganized as U.S. Magnesium in a move intended to improve the magnesium plant's financial position.

The company had been struggling with low worldwide market prices for its primary products, metal-strengthening magnesium and magnesium alloys.

Until recent improvements at the plant, it held the dubious distinction for years of being the nation's worst polluter because of the chlorine gas the mill pumped into the air.

The EPA's lawsuit, however, concerns hazardous chemical byproducts — including dioxins and HCB — regulated under the Resource Conservation and Recovery Act, the federal law governing solid waste from cradle to grave.

U.S. Magnesium always has said Congress specifically exempted its plant from the law. And, in its recent court filings, company attorneys insist there has been rampant disagreement among EPA employees on that same point.

That has led EPA to interpret and apply the waste law to the Utah magnesium plant "in a fractured and inconsistent manner," company attorneys said.

Information from recent depositions "readily demonstrates that, not only was there confusion and inconsistency on the part of EPA a decade ago, the confusion and inconsistency exists to this very day," they said in court papers backing up their request for a delay.

EPA lawyers countered that internal discussion was just that: internal and not the view of the agency itself. The agency's position has been consistent and clear in a decade's worth of letters to the company, EPA attorneys wrote.

That the judge granted the delay is not necessarily an indication that he agrees about a smoking gun. Rather, under court-procedure rules, he is expected to give U.S. Magnesium attorneys lots of latitude for making their case.

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